

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 2079 - HB 2114

March 9, 2020

SUMMARY OF BILL: Increases, from 18 to 21, the minimum age of persons allowed to purchase and use tobacco, smoking hemp, or vapor products. Adds any products which contain nicotine for human consumption to the definition of “tobacco product”. Changes the schedule of fees for civil penalties assessed to retail tobacco licensees. Requires the Tennessee Department of Agriculture (DOA) to conduct random unannounced inspections of the every licensee twice a year. Requires each retailer selling tobacco products to obtain an annual retail tobacco license from DOA. Removes the civil penalty for minors possessing a tobacco or hemp product. Creates a Class B misdemeanor for persons selling tobacco, vapor, or smoking hemp products without a license. Imposes a \$0.62 tax per cartridge on electronic smoking device cartridges. Effective upon becoming law, for purposes of promulgating rules and issuing licenses; effective January 1, 2021, for all other purposes.

ESTIMATED FISCAL IMPACT:

Increase State Revenue - \$16,664,000/FY20-21
\$33,117,500/FY21-22 and Subsequent Years

Increase State Expenditures - \$1,318,200/FY20-21
\$2,426,400/FY21-22 and Subsequent Years

Assumptions:

- On December, 20, 2019, the President signed legislation amending the Federal Food, Drug, and Cosmetic Act, and raised the federal minimum age of sale of tobacco products from 18 years of age to 21 years of age.
- Because the current federal law minimum age is 21, it is estimated that there will be no fiscal impact related to aligning Tennessee state law to the federal requirements.

Wholesale tax of vape/e-cigarette products:

- By adding products which contain nicotine to the definition of “tobacco products”, it is assumed that non-tobacco nicotine containing products, such as vape and e-cigarette products, would now be subject to the tax.
- The wholesale of vapor products in Tennessee are estimated to be \$57,626,170, resulting in a recurring increase in state revenue of \$3,803,327 (\$57,626,170 x 6.6%).
- Due to the effective date of January 1, 2021, 50 percent of the recurring increase, or \$1,901,664, will be realized in FY20-21.

\$0.62/cartridge tax:

- Based on Fiscal Review Committee staff research, approximately 833,524 Tennesseans use vapor products or electronic cigarettes.
- It is estimated that the average user consumes one unit a week or 43,343,248 (833,524 Tennesseans x 52 weeks).
- The total increase from the tax on cartridges is estimated to be \$26,872,814 (43,343,248 x \$0.62).
- Due to the effective date of January 1, 2021, 50 percent of the recurring increase, or \$13,436,407, will be realized in FY20-21.

Inspections twice a year:

- According to the Tennessee Fuel and Convenience Store Association, there are approximately 6,000 retail outlets that offer tobacco products for sale in Tennessee.
- In FY18-19 DOA performed 6,317 tobacco inspections with approximately 41 Food and Dairy Inspectors, it is therefore estimated that an additional 30 Food and Dairy 2 Inspectors and 4 Regional Food and Dairy Supervisors will be required to check approximately 6,000 stores at least twice a year, or at least 12,000 inspections (6,000 stores x 2 times a year).
- There will be a recurring increase in expenditures of \$2,095,800 [(\$45,360 salary + \$14,100 benefits + \$10,400 truck lease, cell phone, gas, etc.) x 30 positions] for the 30 Food and Dairy 2 Inspectors and \$330,600 [(\$56,328 salary + \$15,922 benefits + \$10,400 truck lease, cell phone, gas, etc.) x 4 positions] for the four Regional Food and Dairy Supervisors and a one-time increase in expenditures of \$105,000 for training and supplies.
- Due to the effective date of January 1, 2021, 50 percent of the recurring increase will be incurred in FY20-21.
- The total increase in state expenditures is therefore estimated to be \$1,318,200 {[(\$2,095,800 + \$330,600) x 50%] + \$105,000} in FY20-21 and \$2,426,400 (\$2,095,800 + \$330,600) in FY21-22 and subsequent years.
- The proposed legislation creates a civil penalty of not more than \$250 for the first time a part licensed retailer violates the law pursuant to Tenn. Code Ann. Title 39 Chapter.
- It is estimated that one percent of stores will have to pay the \$250 fine per year, resulting in a recurring increase in state revenue of \$15,000 (6,000 x \$250 x 1.0%). Due to the effective date, 50 percent of such increase, or \$7,750, will be realized in FY20-21.

Tobacco Retail Licensure:

- According to the Department of Revenue's website "A person selling or making available tobacco products to the ultimate consumer is a retail dealer under Tennessee law. Retailers of tobacco products are not currently required to obtain a license to sell tobacco products."
- The proposed legislation requires DOA to annually license retailers selling tobacco products.
- DOA is require to establish a fee for a retail tobacco license, at a level to ensure the department's enforcement and licensing activities are fully funded.

- It is therefore estimated that the Department of Agriculture will charge a licensure fee to retail outlets offering tobacco products to offset the cost of the new positions required for the inspections mentioned above, or \$1,318,200 in FY20-21 and \$2,426,400 in FY21-22 and subsequent years.

Totals:

- The total increase in state revenue in is estimated to be \$16,664,021 [(\$1,901,664 + \$13,436,407 + \$7,750 + \$1,318,200) in FY20-21, and \$33,117,541 [(\$3,803,327 + \$26,872,814 + \$15,000 + \$2,426,400) in FY21-22 and subsequent years.
- There will not be a significant impact on the number of cases in the court system for state or local government to experience any significant impact on revenue or expenditures.

IMPACT TO COMMERCE:

**Increase Business Expenditures – Exceeds \$1,356,000/FY20-21
\$2,546,400/FY21-22 and Subsequent Years**

Jobs Impact – Not Significant

Assumptions:

- Pursuant to Tenn. Code Ann. § 39-17-1506, all retail establishments selling tobacco products are required to post a sign stating that state law prohibits the sale of tobacco products or smoking paraphernalia to persons under the age of 18 years. Such signs will have to be updated as a result of this legislation to reflect the new minimum age of 21 years.
- According to the Tennessee Fuel and Convenience Store Association, there are approximately 6,000 retail outlets that offer tobacco products for sale in Tennessee.
- Assuming a minimum cost of \$5.00 per sign, the one-time increase in business expenditures is estimated to exceed \$30,000 (6,000 businesses x \$5.00 per sign).
- Furthermore, it is estimated that these stores will incur \$7,750 in civil penalties in FY20-21 and \$15,000 in FY21-22 and subsequent years.
- Business expenditures are estimated to increase by \$1,318,200 in FY20-21, and by \$2,426,400 in FY21-22 and subsequent years due to the imposition of fees by DOA.
- All additional taxes are assumed to be passed onto consumers.
- The total increase in business expenditures is estimated to exceed \$1,355,950 (\$30,000 + \$7,750 + \$1,318,200) in FY20-21, and to be \$2,546,400 (\$15,000 + \$2,531,400) in FY21-22 and subsequent years.
- Any impact on non-government jobs in the state as the result of this legislation will be not significant.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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